**Preparatory Committee for the 2000 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons**

NPT/CONF.2000/PC.II/2
27 April 1998

ORIGINAL: ENGLISH

Second session
Geneva, 27 April - 8 May 1998

# SECURITY ASSURANCES: A SOUTH AFRICAN PERSPECTIVE

Working paper submitted by South Africa

## 1. INTRODUCTION

Paragraph 8 of the 1995 Principles and Objectives for Nuclear Non-Proliferation and Disarmament states that:

> "Noting United Nations Security Council resolution 984(95), which was adopted unanimously on 11 April 1995, as well as the declarations by the nuclear-weapon States concerning both negative and positive security assurances, further steps should be considered to assure non-nuclear-weapon States part to the Treaty against the use or threat of use of nuclear weapons. Theses steps could take the form of an internationally legally binding instrument."

The 1990 Nuclear Non-Proliferation Treaty Review Conference draft Final Document stated in paragraph 7 under the heading Security Assurances, which while the document as a whole did not achieve agreement was consensus language, that:

> "The Conference recognises the need for effective international arrangements, that could be included in an international legally binding instrument, to assure non-nuclear-weapon States parties to the Treaty against the use or threat of use of nuclear weapons. The conclusion of an international instrument providing for such arrangements would strengthen the security of non-nuclear-weapon States parties to the Treaty and offer additional incentives to other non-nuclear-weapon States to adhere to the Treaty. Participation of all nuclear-weapon States, including those parties to the Treaty, in such an instrument would contribute to ensuring its

maximum effectiveness."

In the Advisory Opinion of the International Court of Justice on the "Legality of the Threat or Use by a State of Nuclear Weapons in Armed Conflict" it was decided unanimously that:

> "There is in neither customary nor conventional international law any specific authorization of the threat or use of nuclear weapons" and that "A threat or use of force by means of nuclear weapons that is contrary to Article 2, paragraph 4, of the United Nations Charter, and that fails to meet all the requirements of Article 51, is unlawful."

## 2. SOUTH AFRICAN PERSPECTIVE

At the 1997 meeting of this Preparatory Committee South Africa proposed that the PrepCom should decide to take up the work on security assurances envisaged in the "Principles and Objectives", with a view to completing this work before the year 2000 so as to make a recommendation to the Review Conference.

The issue at stake is the granting of legally binding security assurances to the non-nuclear-weapon States parties of the NPT, thereby fulfilling the undertaking which should be given to the States which have voluntarily given up the nuclear-weapons option by becoming parties to the Treaty. The negotiation of legally binding security assurances within the NPT umbrella, as opposed to some other forum, would provide a significant benefit to the Treaty parties and would be seen as an incentive to those who remain outside the NPT. Security assurances rightfully belong to those who have given up the nuclear weapon option as opposed to those who are still keeping their options open. They would strengthen the nuclear non-proliferation regime and confirm the role of the NPT and its indefinite extension.

## 3. SECURITY ASSURANCES IN THE CONTEXT OF THE NPT

The issue of legally binding security assurances to non-nuclear-weapon States is a complex issue. Key questions which would need to be addressed are:

- Identification of the States providing the security assurances;
- Identification of the beneficiaries of such security assurances;
- The nature and scope of the security assurances being provided;
- Elements that would need to be included in a legally

binding instrument on security assurances; and

- In what format such security assurances would be provided.

4. IDENTIFICATION OF THE STATES PROVIDING SECURITY ASSURANCES

The only States in a position to provide security assurances, in that they are legally in a position to possess nuclear weapons and thereby having the capacity to use or threaten to use nuclear weapons, are the nuclear-weapon States. Article IX(3) of the nuclear Non-Proliferation Treaty identifies and defines a nuclear weapon-State as a one "... which has manufactured and exploded a nuclear weapon or other nuclear explosive device prior to 1 January 1967."

5. IDENTIFICATION OF THE BENEFICIARIES OF SECURITY ASSURANCES

United Nations Security Council Resolution 984(1995), acknowledges the legitimate interest of all non-nuclear-weapon States under the NPT to receive security assurances. This legitimate interest of all of the NPT's non-nuclear-weapon States is further acknowledged in the statements (S/1995/261, S/1995/262, S/1995/263, S/1995/264, S/1995/265) made by each of the nuclear-weapon States on the issue of security assurances.

6. THE NATURE AND SCOPE OF THE SECURITY ASSURANCES BEING PROVIDED

Security assurances comprise of negative and positive assurances. Negative security assurances are those in terms of which there is an undertaking by the nuclear-weapon States not to use or threaten to use nuclear weapons. Positive security assurances are those in terms of which there is an undertaking to provide assistance, in accordance with the United Nations Charter, to a State victim of an act of nuclear-weapons aggression or the object of a threat of such aggression.

A complicating factor in this regard, however, is that all non-nuclear-weapon States are not similar. Many of the non-nuclear-weapon States parties to the NPT are members of security arrangements/alliances which rely on the nuclear capability of nuclear-weapon States as an integral part of their defence strategy. It is for this reason that in some of the abovementioned statements of the nuclear-weapon States (France, Russia, United Kingdom, United States) on security assurances these assurances were qualified by to exclude cases of an invasion or any other attack on a nuclear-weapon State's territory, its armed forces or other troops, its allies or on a State towards which it has a security commitment, carried out or sustained by such a non-nuclear-weapon State in association or alliance with a nuclear-weapon State.

A further qualification included in some of the 1995 security assurance statements of the nuclear-weapon States (United Kingdom, United States) was that those assurances given emphasised that the assurances were not regarded as applicable if any beneficiary is in material breach of its own non-proliferation obligations under the NPT. It is assumed that the material breach referred to here relates to instances where a non-nuclear-weapon-States party to the NPT is acquiring or developing nuclear weapons in contravention with the Treaty.

The negotiation of any internationally legally binding instrument on security assurances would need to take these factors into account. Should such elements be included in the agreement it would mean that, while all non-nuclear weapon States parties to the NPT are beneficiaries of security assurances, these assurances would in certain circumstances be qualified.

7. ELEMENTS THAT WOULD NEED TO BE INCLUDED IN A INTERNATIONALLY LEGALLY BINDING INSTRUMENT ON SECURITY ASSURANCES

An internationally legally binding instrument would, inter alia, need to include the following elements:

- A general statement of the security assurances which are the subject of the instrument.

- The identification of the States providing the security assurances.

- The identification of the States beneficiary of the security assurances.

- Any qualifications to the security assurances provided for in the instrument.

- Provisions on the mandatory actions to be undertaken by the Security Council where a beneficiary of the security assurances are the subject of a threat of use or use of nuclear-weapons.

- Provisions for assistance to be provided to a beneficiary of the security assurances attacked or threatened by the use of nuclear-weapons.

8. THE FORMAT IN WHICH SECURITY ASSURANCES WOULD BE PROVIDED

Security assurances should be provided in the context of an internationally legally binding instrument, which could either be in the format of a separate agreement reached in the context of the Nuclear Non-Proliferation Treaty, or as a protocol to the NPT. The arguments that declarations made by the nuclear-weapon States are sufficient or that these

assurances should only be granted in the context of nuclear-weapon-free zones, are not valid. The primary undertaking not to aspire to nuclear-weapons has been made under the NPT; it is therefore in the context of or as a part of this Treaty that security assurances should also be given.